

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

February 10, 2006 Session

**ROBERT E. SMITH v. KWIK FUEL CENTER A/K/A MARSH
PETROLEUM, INC., ET AL.**

**Appeal from the Circuit Court for Knox County
No. 3-760-01 Wheeler A. Rosenbalm, Judge**

No. E2005-00741-COA-R3-CV - FILED MARCH 27, 2006

Mr. Smith, a truck driver, was terminated by his employer and charged with theft after the manager of a fuel station where plaintiff regularly purchased fuel advised his employer that Mr. Smith was misusing employer's credit card to obtain cash and merchandise. After being acquitted of theft charges, Mr. Smith filed claims against his employer for malicious prosecution and against the fuel station owner for malicious prosecution and intentional interference with employment. The trial court granted the fuel station owner's motion for summary judgment with respect to Mr. Smith's claim for malicious prosecution. Subsequently, the trial court also entered directed verdict for fuel station owner as to Mr. Smith's claim of intentional interference with employment and for his employer as to Mr. Smith's claim of malicious prosecution. We affirm the trial court's summary judgment and directed verdicts in favor of the defendants.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed; Cause Remanded

SHARON G. LEE, J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., and D. MICHAEL SWINEY, JJ., joined.

J. Mikel Dixon, Knoxville, Tennessee, for the Appellant, Robert E. Smith.

Louis Andrew McElroy, II, Knoxville, Tennessee, for the Appellee, Kwik Fuel Center a/k/a Marsh Petroleum, Inc.

Wade M. Boswell, Knoxville, Tennessee, for the Appellee, Olinger Trucking Co., Inc.

OPINION

I. Background

From April of 1998 until November of 1999, the appellant, Robert E. Smith, was employed as a truck driver by the appellee, Olinger Trucking Co., Inc., (“Olinger”). Olinger issued Mr. Smith and the other drivers Comdata credit cards for purchasing fuel for their trucks. Olinger authorized its drivers to use the Comdata cards solely for the purchase of fuel purchase and use of the cards for any other purpose, such as to obtain cash advances or purchase merchandise, was prohibited absent Olinger’s prior approval.

Mr. Smith regularly purchased fuel for his truck at the Kwik Fuel Center station located on Andersonville Highway in Clinton which was owned and operated by the appellee, Kwik Fuel Center a/k/a Marsh Petroleum, Inc. (“Kwik Fuel”). There were two Kwik Fuel clerks present at the station store each day when Mr. Smith made his purchase - Sharon Braden and Lisa St. Claire. After filling his tanks, Mr. Smith would submit his Comdata card to Ms. Braden and she would enter into a credit card machine an amount to be billed Olinger via Comdata for purchases on the fuel card. She would then present Mr. Smith with a fuel charge ticket that set forth the total amount charged to the card based upon a stated quantity of fuel at a stated cost per gallon. Mr. Smith would sign this ticket, retaining a copy that he would later turn in to Olinger.

In October of 1999, Lisa St. Clare advised Kwik Fuel station manager Vanessa Durand that she had observed Mr. Smith and Ms. Braden sharing cash advances from charges to Olinger’s Comdata card. Ms. Braden’s job required that she operate both the credit card machine and a cash register to process purchases. The cash register was electronically connected to the fuel pumps and automatically registered the amount of fuel pumped, and that information could not be altered by Ms. Braden. However, the credit card machine was not connected to the fuel pumps and required that purchase data be entered manually. Apparently, Ms. Braden would enter an inflated amount in the credit card machine to be charged to Olinger for fuel under the Comdata card. Then, on the cash register, she would ring up the actual cost of the fuel purchased by Mr. Smith and the difference between that amount and the amount charged to the Comdata card would be available as cash back or as funds to pay for store merchandise such as food and cigarettes.

After receiving the report from Lisa St. Claire, Ms. Durand compared a fuel charge ticket from the previous day showing an amount charged to Mr. Smith’s Comdata card for the purchase of fuel with a Kwik Fuel cash register receipt for the same transaction and discovered a discrepancy between the two. Thereupon, Ms. Durand called Richard Harold Olinger, Jr., Olinger’s co-owner, informed him of Ms. St. Claire’s allegations, and asked him if he would like to investigate the matter further. A few days later, Mr. Olinger went to the Kwik Fuel station and compared Kwik Fuel’s cash

register receipts for the months of September and October 1999¹ with the fuel purchase tickets turned in by his drivers for the same period. Mr. Olinger's undisputed testimony regarding this investigation was as follows:

Within the next day or two I made a trip to the fuel stop, the Kwik Fuel there in Clinton and talked to Ms. Durand. She told me that - - she handed me a box of receipts and said you're welcome to go through and find your transactions.

What I had done was before I went I had pulled several drivers' tickets including Mr. Smith for a time period that she told me she thought she still had the cash register roll receipts and took those with me and just started going through the cash register rolls and matching up any the fuel purchases any other drivers had made there versus the cash register receipts.

Q. Okay. What other drivers' receipts did you look at along with Mr. Smith's?

A. Just anybody that made a purchase there in that time period, not a specific driver. I couldn't remember to tell you who.

Q. Okay. About how many drivers did you have at that time?

A. I run pretty close to 30, 35, somewhere in that range.

Q. Okay.

A. But not everyone purchased fuel there.

Q. All right. Tell us what you found when you did that.

A. Doing the cash register comparisons on the - - I had to go through several boxes because she had them broke down in shifts, so I had to go through shifts of receipts. And the only receipts that I found that didn't match the transactions on the cash register with the amount on the fuel ticket that was turned in to me was Mr. Smith's.

Mr. Olinger's review of the fuel charge tickets and cash register receipts revealed Mr. Smith signed seventeen fuel tickets generated by Ms. Braden that stated incorrect amounts as to gallons of

¹It appears from the record that only cash register receipts for these two months were retained by Kwik Fuel and, therefore, review of receipts generated prior to those months was not possible.

fuel purchased. In each instance, the cash register receipt indicated that the difference between the fuel purchase charge to Mr. Smith's Comdata card and the amount charged for fuel shown on the cash register receipt was either paid out as either cash back or was used to pay for store merchandise.

Upon discovering these discrepancies, Mr. Olinger called Mr. Smith. Mr. Smith testified that Mr. Olinger accused him of "stealing off his credit card " and that, in response to his denial, Mr. Olinger "kept rattling on about the amount of the fuel tickets and all." Thereafter, Mr. Olinger and Mr. Olinger's father who had previously owned Olinger Trucking Company met with Mr. Smith at Mr. Olinger's office. Mr Smith testified about this meeting as follows:

I had came into his office and he had showed me it looked like a xerox copy of one of the receipts, fuel receipts, and there was a cash register ticket that had been copied on this piece of paper, too, it wasn't the original copies, but he had basically told me that I was the one responsible for stealing, and what could I say, he had already called me on the telephone and accused me of it, so. His daddy sitting over here in the corner staring me down, so I really didn't owe either one of them an explanation because I know what I done and what I hadn't done. So I just walked out.

Mr. Olinger testified that when he received no explanation from Mr. Smith for the discrepancies between the fuel purchase tickets and the cash register receipts he terminated Mr. Smith's employment. Thereafter, Mr. Olinger contacted Olinger's attorney, Wade Boswell, and advised him that an employee had used a fuel credit card for cash back and for purchases other than fuel without approval. Mr. Boswell advised Mr. Olinger to take all of the information, including the fuel charge tickets, to the Anderson County District Attorney General's office.

On November 22, 1999, approximately one week after Mr. Smith's termination, Mr. Olinger went to the Anderson County District Attorney's office and met with a detective for the City of Clinton Police Department. Mr. Olinger's undisputed testimony regarding that visit and meeting was as follows:

I went out and asked to see the DA and they sent out a detective. And I explained what I had, presented it in front of the detective, here's what I got, here's the discrepancies, here's what's gone, an employee there and my driver are the only two that could have been involved in this situation where the money disappeared, and I left him with it. And he told me he'd check into the matter and show it to the DA and see what they wanted to do.

Mr. Smith was questioned twice about the case by the detective and proclaimed his innocence. At the end of the second interview, he was arrested and taken to jail and thereafter, an indictment was issued charging him with "unlawfully, intentionally and knowingly" obtaining

property from Olinger in the approximate amount of \$918.25 without Olinger's consent and with intent to deprive in violation of T.C.A. § 39-14-103. Subsequently, following a jury trial, Mr. Smith was acquitted of the charges against him.

In December of 2001, Mr. Smith filed a complaint against Kwik Fuel in the Circuit Court for Knox County for malicious prosecution and intentional interference with employment relations. The complaint requested compensatory and punitive damages in an amount not to exceed \$3,000,000.

In its answer to Mr. Smith's complaint, Kwik Fuel pled the comparative fault of Olinger as an affirmative defense stating that the fault of Olinger was equal to or greater than its own and that any recovery by Mr. Smith should be reduced by the percentage of fault attributed to Olinger or barred. Mr. Smith then filed an amended and superseding complaint to include Olinger as a defendant in the case based upon a theory of comparative negligence.

In August of 2003, the trial court dismissed Mr. Smith's claim for malicious prosecution against Kwik Fuel upon its motion for summary judgment. Trial of remaining claims against both defendants was held in January of 2005 and, at the close of Mr. Smith's proof, both Olinger and Kwik Fuel filed moved for directed verdict. The trial court granted these motions, and ruled that Mr. Smith recover nothing from either defendant. This appeal followed.

II. Issues

Issues presented for our review in this case are restated as follows:

- 1) Did the trial court err in granting Kwik Fuel's motion for summary judgment by ruling that Kwik Fuel was not guilty of malicious prosecution as a matter of law?
- 2) Did the trial court err in granting Olinger's motion for directed verdict by ruling that Olinger was not guilty of malicious prosecution as a matter of law?
- 3) Did the trial court err in granting Kwik Fuel's motion for directed verdict by ruling that Kwik Fuel was not guilty of intentional interference with employment as a matter of law?
- 4) Was the trial court precluded from ruling on the defendants' motions for directed verdict by TRCP 50.01?

III. Standard of Review

As indicated, these issues require that we determine the propriety of the trial court's grant of motions for both summary judgment and directed verdict. The standard of review of a motion for directed verdict is the same as that for review of a motion for summary judgment. *See Cortez v. Alutech, Inc.*, 941 S.W.2d 891, 893 (Tenn. Ct. App. 1996). Accordingly, while the standard set forth below is discussed in terms of a summary judgment, it applies equally to a directed verdict.

Summary judgments enable courts to conclude cases that can and should be resolved on dispositive legal issues. *See Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993); *Airport Props. Ltd. v. Gulf Coast Dev., Inc.*, 900 S.W.2d 695, 697 (Tenn. Ct. App. 1995). They are appropriate only when the facts material to the dispositive legal issues are undisputed. Accordingly, they should not be used to resolve factual disputes or to determine the factual inferences that should be drawn from the evidence when those inferences are in dispute. *See Bellamy v. Federal Express Corp.*, 749 S.W.2d 31, 33 (Tenn. 1988).

To be entitled to a summary judgment, the moving party must demonstrate that no genuine issues of material fact exist, and that he or she is entitled to judgment as a matter of law. *See Tenn. R. Civ. P. 56.04*; *Byrd v. Hall*, 847 S.W.2d at 210; *Planet Rock, Inc. v. Regis Ins. Co.*, 6 S.W.3d 484, 490 (Tenn. Ct. App. 1999). A summary judgment should not be granted, however, when a genuine dispute exists with regard to any material fact. *Seavers v. Methodist Med. Ctr.*, 9 S.W.3d 86, 97 (Tenn. 1999); *Hogins v. Ross*, 988 S.W.2d 685, 689 (Tenn. Ct. App. 1998). Our task on appeal is to review the record to determine whether the requirements for granting summary judgment have been met. *See Hunter v. Brown*, 955 S.W.2d 49, 50-51 (Tenn. 1997); *Aghili v. Saadatnejadi*, 958 S.W.2d 784, 787 (Tenn. Ct. App. 1997). Tenn. R. Civ. P. 56.04 provides that summary judgment is appropriate where: (1) there is no genuine issue with regard to the material facts relevant to the claim or defense contained in the motion, *see Byrd v. Hall*, 847 S.W.2d at 210; and (2) the moving party is entitled to a judgment as a matter of law on the undisputed facts. *See Anderson v. Standard Register Co.*, 857 S.W.2d 555, 559 (Tenn. 1993). A party seeking a summary judgment must demonstrate the absence of any genuine and material factual issues. *Byrd v. Hall*, 847 S.W.2d at 214.

When the party seeking summary judgment makes a properly supported motion, the burden shifts to the non-moving party to set forth specific facts establishing the existence of disputed, material facts which must be resolved by the trier of fact. *See Byrd v. Hall*, 847 S.W.2d at 215; *Robinson v. Omer*, 952 S.W.2d 423, 426 (Tenn. 1997). The non-moving party may not simply rest upon the pleadings, but must offer proof by affidavits or other discovery materials (depositions, answers to interrogatories, and admissions on file) provided by Rule 56.06 showing that there is a genuine issue for trial. If the non-moving party does not so respond, then summary judgment, if appropriate, shall be entered against the non-moving party. Tenn. R. Civ. P. 56.06.

Summary judgments do not enjoy a presumption of correctness on appeal. *See Nelson v. Martin*, 958 S.W.2d 643, 646 (Tenn. 1997); *City of Tullahoma v. Bedford County*, 938 S.W.2d 408, 412 (Tenn. 1997). Accordingly, when we review a summary judgment, we view all the evidence in the light most favorable to the non-movant, and we resolve all factual inferences in the non-movant's favor. *See Luther v. Compton*, 5 S.W.3d 635, 639 (Tenn. 1999); *Muhlheim v. Knox County Bd. of Educ.*, 2 S.W.3d 927, 929 (Tenn. 1999). A summary judgment will be upheld only when the undisputed facts reasonably support one conclusion - that the moving party is entitled to a judgment as a matter of law. *See White v. Lawrence*, 975 S.W.2d 525, 529 (Tenn. 1998); *McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn. 1995). We will affirm a summary judgment on different grounds than those relied on by the trial court upon our determination that the trial court reached the correct result.

Clark v. Metropolitan Government of Nashville and Davidson County, 827 S.W.2d 312 (Tenn. Ct. App. 1991).

IV. Malicious Prosecution (Kwik Fuel)

The first issue we address is whether the trial court erred in granting Kwik Fuel's motion for summary judgment by ruling that Kwik Fuel was not guilty of malicious prosecution as a matter of law.

The three elements essential to a cause of action for malicious prosecution are that (1) the defendant initiated a prior lawsuit or judicial proceeding against the plaintiff without probable cause, (2) the defendant brought the prior action with malice, and (3) the prior action was terminated in the plaintiff's favor. *Roberts v. Federal Express Corporation*, 842 S.W.2d 246, 247-248 (Tenn. 1992).

Although the trial court does not indicate the specific reason for its grant of summary judgment in favor of Kwik Fuel, Mr. Smith speculates that the court's ruling was based upon a determination that Kwik Fuel did not actually initiate his prosecution. However, Mr. Smith asserts, "one who procures a third person to institute criminal proceedings is liable under the same conditions as though he had himself initiated the proceedings." Mr. Smith contends the fact that Kwik Fuel did not contact law enforcement directly does not allow it to escape liability for malicious prosecution, and he insists that he has created a question for the jury as to whether Kwik Fuel is responsible for his prosecution. As authority for this argument, Mr. Smith cites the Restatement (Second) of Torts § 653.

In general, Restatement (Second) of Torts § 653 (1977) sets forth the elements of a cause of action for malicious prosecution noted by the Court in *Roberts*, *id.*:

A private person who initiates or procures the institution of criminal proceedings against another who is not guilty of the offense charged is subject to liability for malicious prosecution if

(a) he initiates or procures the proceedings without probable cause and primarily for a purpose other than that of bringing an offender to justice, and

(b) the proceedings have terminated in favor of the accused.

Comment d to this section further states in pertinent part:

[O]ne who procures a third person to institute criminal proceedings against another is liable under the same conditions as though he had himself initiated the proceedings. A person who does not himself initiate criminal proceedings may procure their institution ... by

inducing a third person, either a private person or a public prosecutor, to initiate them It is, however, not enough that some act of his should have caused the third person to initiate the proceedings. One who gives to a third person, whether public official or private person, information of another's supposed criminal conduct or even accuses the other person of the crime, causes the institution of such proceedings as are brought by the third person. *The giving of the information or the making of the accusation, however, does not constitute a procurement of the proceedings that the third person initiates if it is left to the uncontrolled choice of the third person to bring the proceedings or not as he may see fit.*

(emphasis added).

In support of his argument that he has created a factual issue with respect to whether Kwik Fuel initiated his prosecution, Mr. Smith cites the following statements from Mr. Olinger's affidavit:

Sometime in the early part of November 1999, I was contacted by Vanessa Durand who identified herself to be the Manager of Kwik Fuel Center which is located at the Clinton exhibit [sic], being Exit 122, I-75. Ms. Durand informed me that one of my employees and one of her clerks had engaged in an improper transaction in which my driver and her clerk split cash that was run through as a fuel charge on the employee's Comdata card.

Within a day or two, I met Ms. Durand at Kwik Fuel and was shown boxes that held cash receipt records for the past two months. I was shown by Ms. Durand how to double-check the cash receipts against the Comdata credit card tickets.

Although Mr. Smith's attestations may well constitute evidence Kwik Fuel made accusations against him and provided Olinger with information, they do not show Kwik Fuel controlled the choice of whether Mr. Smith would be prosecuted. We further note Mr. Olinger's unrefuted testimony as follows:

Q. Did Ms. Durand or anyone on behalf of Kwik Fuel ever attempt to do anything that relates to Robert Smith and these discrepancies other than provide you with facts? In other words, did they ever try to persuade you to take any course of action?

A. No.

Additionally, in his response to Kwik Fuel's statement of material facts, Mr. Smith admitted that Ms. Durand "did not tell or encourage" Olinger to prosecute him and that "no one at Kwik Fuel or its affiliates encouraged Olinger Trucking to prosecute him." Finally, the following statement from Mr. Smith's brief appears to concede that the prosecution was prompted by Mr. Olinger's own investigation rather than information Mr. Olinger received from Ms. Durand:

Mr. Olinger put together what he thought were questionable transactions involving Mr. Smith's fuel purchases which he later presented to a law enforcement officer in Anderson County, Tennessee. *As a result of Mr. Olinger's gathering and presenting this evidence to law enforcement*, Mr. Smith was arrested and charged with the crime for which he was later acquitted.

(references to record omitted);(emphasis added).

We do not find that Mr. Smith has created an issue of material fact with regard to whether Kwik Fuel initiated his prosecution. The evidence does not show that Kwik Fuel did anything other than provide Olinger with information, and there is no proof whatsoever that Kwik Fuel exerted control over the decision to prosecute. We have on prior occasion cited comment d to Restatement (Second) of Torts § 653 with approval and noted that "[w]hile it is not necessary that a person actually swear out the warrant to be liable [for malicious prosecution], something more than merely giving information must be shown." *See Wykle v. Valley Fidelity Bank & Trust Company*, 658 S.W.2d 96, 98 (Tenn. Ct. App. 1983).

Based upon our careful review of the record, it is our conclusion that the trial court properly dismissed Mr. Smith's malicious prosecution claim by summary judgment.

V. Malicious Prosecution (Olinger)

The next issue we address is whether the trial court erred in granting Olinger's motion for directed verdict with respect to Mr. Smith's claim for malicious prosecution.

As we have noted, in order to sustain an action for malicious prosecution, the plaintiff must show that the defendant initiated the prior lawsuit without probable cause. "[P]robable cause is the linchpin of malicious prosecution." *Kerney v. Aetna Cas. & Surety Co.*, 648 S.W.2d 247,251 (Tenn. Ct. App. 1982).

In *Roberts*, the Court stated as follows regarding the establishment of probable cause:

Properly defined, probable cause requires only the existence of such facts and circumstances sufficient to excite in a reasonable mind the belief that the accused is guilty of the crime charged. ... Probable

cause is to be determined solely from an objective examination of the surrounding facts and circumstances.

Roberts, 842 S.W.2d at 248.

In the context of an action for malicious prosecution, the question is not whether the plaintiff was actually guilty of the crime alleged against him, but whether reasonable grounds existed for the defendant's belief that he was guilty. See *Peoples Protective Life Insurance Company v. Neuhoff*, 407 S.W.2d 190, 199 (Tenn. Ct. App. 1966). When reasonable minds could not differ on the existence of probable cause, summary judgment (or directed verdict) is appropriate. See *Morat v. State Farm Mutual Automobile Insurance Company*, 949 S.W.2d 692 (Tenn. Ct. App. 1997) and *Morrison v. Goodowens*, 35 F.3d 566 (Table), 1994 WL 468038 (Tenn. 6th Cir. Aug. 29, 1994). Therefore, it is our duty to determine whether, given the relevant undisputed facts and the relevant disputed facts as presented by Mr. Smith, a reasonable jury could find that there was not probable cause for Olinger to file the warrant against Mr. Smith.

The record shows that the following facts with regard to matters occurring prior to the warrant being filed against Mr. Smith in this case are either admitted or unrefuted:

(1) Mr. Olinger received a report from Ms. Durand that a Kwik Fuel employee witnessed Mr. Smith and another Kwik Fuel employee, Sharon Braden, dividing money that was charged to Olinger's credit card.

(2) A few days after receiving this report, Mr. Olinger went to Kwik Fuel's store and reviewed cash register receipts, comparing them with fuel purchase tickets for the months of September and October, 1999, which were signed by Mr. Smith and turned in to Olinger. As a result of his review of these records, Mr. Olinger found seventeen transactions showing a discrepancy between the amount charged to the fuel credit card as reflected on fuel purchase tickets signed by Mr. Smith and the amount shown for fuel purchase as shown on corresponding cash register receipts. In each instance, the cash register receipt showed that the amount of discrepancy was paid out as cash back or used to purchase store merchandise.

(3) Although other drivers employed by Olinger made fuel purchases at the Kwik Fuel station in question, the only fuel purchase tickets showing a discrepancy with the cash register receipts were the seventeen tickets signed by Mr. Smith.

(4) Mr. Smith was only authorized to use Olinger's credit card for the purchase of fuel and was not allowed to use the card to purchase merchandise or to obtain cash absent Mr. Olinger's prior approval. Mr. Smith did not have such approval with regard to any of the seventeen transactions at issue.

(5) Mr. Olinger met with Mr. Smith and confronted him with the noted discrepancies and Mr. Smith offered no explanation and "just walked out" of the meeting.

Mr. Smith was charged with theft of property under T.C.A. § 39-14-103 which provides that “[a] person commits theft of property if, with the intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner’s consent.” Based upon the above undisputed facts, it is our determination that a reasonable jury could only conclude that Olinger had probable cause to prosecute Mr. Smith for the offense charged. Accordingly, it is our determination that the trial court’s directed verdict in favor of Olinger on the issue of malicious prosecution was proper.

VI. Intentional Interference with Employment

The next issue we address is whether the trial court erred in granting Kwik Fuel’s motion for directed verdict by ruling that Kwik Fuel was not guilty of intentional interference with Mr. Smith’s employment as a matter of law.

In *Ladd v. Roane Hosiery, Inc.*, 556 S.W.2d 758, 760 (Tenn. 1977), the Tennessee Supreme Court recognized an individual’s property interest in his or her labor and right to work without unjustified interference. The Court further stated,

One who intentionally interferes with this right, causing the employee to be discharged, is liable in tort for the resulting damages. *Dukes v. Brotherhood of Painters*, 191 Tenn. 495, 235 S.W.2d 7 (1950). The essential allegations of such a claim are that the defendant intentionally and without justification procured the discharge of the employee in question. *Dukes v. Brotherhood of Painters, supra*, 57 C.J.S. Master & Servant § 630.

As we have noted, Mr. Olinger attested in his affidavit that Ms. Durand contacted him and advised him that Mr. Smith and one of her employees “had engaged in an improper transaction in which my driver and her clerk split cash that was run through as a fuel charge on the employee’s Comdata card.” We also note that in its answer to Mr. Smith’s amended and superseded complaint, Olinger admitted “it was contacted by an employee of [Kwik Fuel] and that its employee, plaintiff Robert Smith, was implicated in a fraudulent scheme involving [Kwik Fuel] employees.” Olinger further admitted “the contact did result in the termination of plaintiff Smith.” Based upon this evidence, we believe a jury could reasonably conclude that Mr. Smith was terminated as a result of the actions of Kwik Fuel.

Kwik Fuel argues that there is other evidence showing that Mr. Smith admitted that Kwik Fuel’s accusations were not the cause of his termination. The record indicates that six to seven months prior to Olinger’s discovery of the discrepancies in his fuel purchases, Mr. Smith was involved in an accident while working for Olinger and filed a worker’s compensation claim in that regard. Under cross examination, Mr. Smith testified as follows:

Q. Shouldn’t you have done more to prevent your termination?

A. Like what?

. . .

Q. You didn't make any sort of defense to yourself, did you?

A. I done what I was supposed to do as a good driver.

Q. Yeah, but you didn't explain why your cigarettes were charged to Mr. Olinger, did you?

A. I thought this was all a kind of hoax because of a workman's comp case. That's exactly what I thought. And I still think that today.

Q. So you think that you were fired because of a workman's comp case?

A. Yeah.

. . .

Q. By the time you left your employment with Olinger in 1999, November 1999, your worker's comp case was already resolved?

A. Before I had left?

Q. Yes.

A. Yeah.

Q. Yeah, I believe it was.

. . .

Q. When was it over?

A. Well, my workman's comp was a short while, about three months before I got fired.

Q. Okay. Now why did you think there was some sort of hoax about this workers' comp case?

A. Well, there had been several unusual things that the factory had been going on like wrong serial numbers to the house, wrong

destination, and 22 years I've been pulling, that mistake never been made.

Kwik Fuel argues that Mr. Smith's statement that he thinks his worker's compensation claim was the real reason he was fired is sufficient to support the trial court's directed verdict. We disagree. Although Mr. Smith testified that he *thought* he was fired because of the worker's compensation claim, in light of Olinger's admission that Mr. Smith was fired as a result Kwik Fuel's contact, a reasonable jury could conclude that he was *actually* fired for the latter reason. Alternatively, a jury could reasonably interpret Mr. Smith's testimony to mean that Olinger was searching for a legitimate reason to terminate Mr. Smith's employment after he filed the worker's compensation claim, and Kwik Fuel's accusation provided a legitimate reason.

However, although we believe a jury could reasonably conclude from the statements of Mr. Olinger and the admissions of Olinger that Kwik Fuel's conduct was a cause in fact of Mr. Smith's termination, we do not believe a jury could reasonably conclude that such conduct was without justification. Kwik Fuel had a strong and indisputable interest in discouraging criminal activity on its business premises, particularly activity involving its own employee and an employee of a customer. Further, Kwik Fuel was in a position to prevent further theft of its customer's property by notifying its customer. Accordingly, we believe the actions of Kwik Fuel were justified under the facts presented in this case and, therefore, it is our determination that the directed verdict in favor of Kwik Fuel with regard to intentional interference with employment be affirmed.

VII. Tenn. R. Civ. P. 50.01

The final issue we address is whether the trial court was precluded from ruling on the defendants' motion for directed verdict under that portion of Tenn. R. Civ. P. 50.01 which provides as follows:

A motion for directed verdict may be made at the close of the evidence offered by an opposing party or at the close of the case. The court shall reserve ruling until all parties alleging fault against any other party have presented their respective proof-in-chief.

Mr. Smith argues that, pursuant to this language, the trial court is forbidden from directing a verdict until all the proof is in where there is more than one defendant, and one or both allege comparative fault against the other. He states "[i]t is undisputed that [Olinger] was brought into this case as a result of a plea of comparative fault by Kwik Fuel. Accordingly, the court could not rule on Kwik Fuel's motion for directed verdict until it put on proof."

As Mr. Smith correctly recognizes in his brief, the case with respect to which the trial court entered its directed verdicts involved "the complaint against Olinger for malicious prosecution, and the complaint against Kwik Fuel for intentional interference with employment relations." Obviously, Kwik Fuel's assertion of comparative fault was only appurtenant to the claim against Kwik Fuel for

malicious prosecution, and that claim was dismissed by summary judgment, not directed verdict. There were no claims of comparative fault as to the claims disposed of by directed verdict, and Mr. Smith's argument based upon Rule 50 is, therefore, without merit.

VIII. Conclusion

For the foregoing reasons, we affirm the trial court's summary judgment and directed verdicts and remand for further action consistent with this opinion. Costs on appeal are adjudged against the appellant Robert E. Smith.

SHARON G. LEE, JUDGE